

STEPHANIE M. HINDS (CABN 154284)
Acting United States Attorney

HALLIE HOFFMAN (CABN 210020)
Chief, Criminal Division

CHRIS KALTSAS (NYBN 5460902)
Assistant United States Attorney

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495
Telephone: (415) 436-6915
FAX: (415) 436-7234
chris.kaltsas2@usdoj.gov

Attorneys for United States of America

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWO CONDOMINIUMS LOCATED AT 465
OCEAN DRIVE, UNITS 315 AND 316,
MIAMI BEACH, FLORIDA 33139,

Defendants.

CASE NO. 21-CV-04060 CRB

**NOTICE OF MOTION AND MOTION TO
STRIKE CLAIMS PURSUANT TO THE
FUGITIVE DISENTITLEMENT DOCTRINE
AND FOR LACK OF STANDING**

DATE: December 3, 2021

TIME: 10:00 a.m.

COURTROOM: #6, 17th Floor (Zoom)

ZACHARY APTE,

JESSICA RICHMAN, and

465 OCEAN LAND TRUST,

Claimants.

TABLE OF CONTENTS

I.	INTRODUCTION	2
II.	BACKGROUND	3
III.	LEGAL STANDARD	6
IV.	ARGUMENT	8
A.	Warrants Have Issued for the Apprehension of Claimants APTE and RICHMAN in a Criminal Case Related to this Civil Forfeiture Action (Elements One and Three)	8
B.	Claimants Had Notice and Knowledge of the Warrants Issued in the Criminal Case (Element Two)	9
C.	Claimants are Not Confined or Otherwise Held in Custody in Another Jurisdiction (Element Four)	10
D.	Claimants Have Deliberately Avoided Prosecution by Leaving the United States, and Declining to Reenter the Country (Element Five)	10
E.	The Fugitive Disentitlement Doctrine Applies Equally to Claimant 465 Ocean Land Trust, Which Also Lacks Standing to Bring a Claim	13
V.	CONCLUSION.....	17

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Degen v. United States</i> , 517 U.S. 820 (1996).....	6
<i>In re Saber</i> , 233 B.R. 547 (Bkrpcy. S.D. Fla. 1999).....	16
<i>Link v. Wabash R.R. Co.</i> , 370 U.S. 626 (1962).....	10
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992).....	8
<i>People v. Chi. Title & Tr. Co.</i> , 389 N.E.2d 540 (Ill. 1979).....	16
<i>Taylor v. Richman's New Approach Ass'n, Inc.</i> , 351 So. 2d 1094 (Fla. 2d DCA 1977).....	16
<i>United States v. \$1,181,895.00</i> , 2015 WL 631394 (C.D. Cal. Feb. 12, 2015).....	7
<i>United States v. \$100,348.00 in U.S. Currency</i> , 354 F.3d 1110 (9th Cir. 2004)	15
<i>United States v. \$129,374 in U.S. Currency</i> , 769 F.2d 583 (9th Cir. 1985)	13
<i>United States v. \$133,420.00</i> , 672 F.3d 629 (9th Cir. 2012)	7
<i>United States v. \$304,980.00 in U.S. Currency</i> , 732 F.3d 812 (7th Cir. 2013)	15
<i>United States v. \$38,852.00 in U.S. Currency</i> , 328 F. Supp. 2d 768 (N.D. Ohio 2004).....	15
<i>United States v. \$525,695.24 Seized from JPMorgan Chase Bank Investment Account</i> , 869 F.3d 412 (6th Cir. 2017)	12
<i>United States v. \$6,190.00 in U.S. Currency</i> , 581 F.3d 881 (9th Cir. 2009)	6-7
<i>United States v. \$6,976,934.65 Plus Interest</i> , 478 F. Supp. 2d 30 (D.D.C. 2007)	7
554 F.3d 123 (D.C. Cir. 2009).....	10
<i>United States v. \$671,160.00 in U.S. Currency</i> , 730 F.3d 1051 (9th Cir. 2013)	7-8, 10, 12-13
<i>United States v. \$8,440,190.00 in US Currency</i> , 719 F.3d 49 (1st Cir. 2013).....	15
<i>United States v. 1990 Chevrolet Corvette</i> , 37 F.3d 421 (8th Cir. 1994)	17
<i>United States v. 2005 Dodge Magnum</i> , 845 F. Supp. 2d 1361 (N.D. Ga. 2012).....	17
<i>United States v. 475 Martin Lane</i> , 545 F.3d 1134 (9th Cir. 2008)	8

1	<i>United States v. 5 S. 351 Tuthill Rd.,</i>	
	233 F.3d 1017 (7th Cir. 2000)	15
2	<i>United States v. 5208 Los Franciscos Way,</i>	
3	385 F.3d 1187 (9th Cir. 2004)	8, 17
	<i>United States v. 8 Gilcrease Lane,</i>	
4	641 F. Supp. 2d 1 (D.D.C. 2009)	15, 17
5	<i>United States v. Abhishek Krishnan's Real and Personal Prop.,</i>	
	469 F. Supp. 3d 481 (E.D.N.C. 2020)	7, 9, 13
6	<i>United States v. All Assets Listed in Attachment A (Megaupload),</i>	
	89 F. Supp. 3d 813 (E.D. Va. 2015)	7
7	<i>United States v. Cambio Exacto, S.A.,</i>	
8	166 F.3d 522 (2d Cir. 1999)	7
	<i>United States v. Collazos,</i>	
9	368 F.3d 190 (2d Cir. 2004)	7, 10, 13-14
10	<i>United States v. Nat'l Bank of Comm.,</i>	
	472 U.S. 713 (1985)	15
11	<i>United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane, Miami, Dade Cty., Fla.,</i>	
	868 F.2d 1214 (11th Cir. 1989)	13
12	<i>United States v. Technodyne LLC,</i>	
13	753 F.3d 368 (2d Cir. 2014)	7, 12-14
14	<i>United States v. U.S. Currency, \$81,000.00,</i>	
	189 F.3d 28 (1st Cir. 1999)	15
15	<i>Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC,</i>	
	859 F.3d 295 (4th Cir. 2017)	10

Statutes

17	18 U.S.C. § 981(a)(1)	2
18	18 U.S.C. § 983(d)(6)	8, 16-17
19	18 U.S.C. § 985(c)	5
20	28 U.S.C. § 2466	<i>passim</i>
21	Fla. Stat. § 689.071	15

Rules

22	Fed. R. Civ. P. Supp. G(5)(b)	5
23	Fed. R. Civ. P. Supp. G(8)(c)(i)(B)	2, 15

Other Authorities

25	76 Am. Jur. 2d Trusts § 261	16
26	Asset Forfeiture in the United States: A Treatise on Forfeiture Law, § 9-4	15
27	Restatement (Third) of Trusts § 2 (2003)	14

1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 3, 2021, at 10:00 a.m., or as soon thereafter as the
3 matter may be heard, in Courtroom 6 of the above-entitled court located at 450 Golden Gate Avenue,
4 San Francisco, California 94102, or on Zoom, the United States of America hereby respectfully moves
5 to strike the Verified Claims of Claimants Zachary Apte, Jessica Richman, and 465 Ocean Land Trust.

6 The Motion will be based on this Notice of Motion and Motion; the attached Memorandum of
7 Points and Authorities; the Declaration of Assistant United States Attorney Chris Kaltsas, attached
8 hereto as Exhibit “A,” along with all exhibits; and all other files and pleadings in this matter.

9
10 DATED: October 18, 2021

STEPHANIE M. HINDS
Acting United States Attorney

11
12 /s/
CHRIS KALTSAS
13 Assistant United States Attorney
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The United States of America hereby moves, pursuant to Title 28, United States Code, Section 2466 and Supplemental Federal Rule of Civil Procedure G(8)(c)(i)(B) to strike the verified claims filed by Claimants Zachary Apte, Jessica Richman, and 465 Ocean Land Trust in accordance with the fugitive disentitlement doctrine, articulated in that same statute. The basis for the motion is that each Claimant is either a fugitive as defined by the fugitive disentitlement statute, or, in the case of Claimant 465 Ocean Land Trust, the Claimant is solely a nominee for the other Claimants and lacks standing pursuant to Supplemental Federal Rule of Civil Procedure G(8)(c)(i)(B).

The government has filed a Verified Complaint for Civil Forfeiture *In Rem* (“Verified Complaint”) seeking forfeiture of two condominiums located at 465 Ocean Drive, Miami Beach, Florida 33139 (Units 315 and 316) (“the Defendant Properties”). The Verified Complaint alleges that the Defendant Properties are subject to forfeiture pursuant to the provisions of Title 18, United States Code, Sections 981(a)(1)(A) and (a)(1)(C), as property involved in money laundering, and/or property constituting, or traceable to, the proceeds of specified unlawful activities. Compl. ¶¶ 26-37.¹ The Verified Complaint followed the filing of an Indictment against Zachary Apte (“APTE”) and Jessica Richman (“RICHMAN”) on March 18, 2021. *See United States v. Zachary Apte and Jessica Richman*, 21-CR-0116 CRB.

On July 6, 2021, APTE and RICHMAN each filed a claim in this civil forfeiture action. Dkt. Nos. 15, 17. On July 8, 2021, the 465 Ocean Land Trust (“the Land Trust”), through its newly appointed successor trustee, Gabriel Ceriotti, also filed a claim in this action. Dkt. No. 18. APTE, RICHMAN, and the Land Trust (collectively, “Claimants”) each assert the same types of interest in the Defendant Properties, that is, “a cognizable right, beneficial interest, and ownership interest.” Verifications of Claims, Dkt. Nos. 15, 17, 18, at 3. None of the Claimants, however, have identified what *portion* of those interests they hold in the properties, so it is unclear whether each claimant is individually asserting

¹ Citations to the record in this case are referenced by their respective docket entries (“Dkt. No.”), with the exception of the First Amended Verified Complaint, which will be referenced as “Compl.” Any references to an “Indictment” refer to Dkt. No. 1 in *United States v. Zachary Apte and Jessica Richman*, Case No. 21-CR-0116 (N.D. Cal. Mar. 18, 2021).

1 a 100 percent interest in the property, or some lesser portion, for purposes of their individual claims.

2 Claimants have all appeared through separate counsel in the civil forfeiture proceedings. APTE
3 and RICHMAN, however, have failed to appear to face the Indictment in the parallel criminal
4 proceeding. Indeed, neither APTE nor RICHMAN are in the United States; in the span of time between
5 the execution of a search warrant on their company, uBiome, Inc., and the issuance of the Indictment,
6 APTE and RICHMAN married and moved, seemingly permanently, to Germany, where APTE is a
7 citizen. To date, both APTE and RICHMAN have refused to appear before this Court to face the
8 criminal charges before them. Claimants' brazen attempt to use this Court to their benefit, both
9 individually and through the Land Trust (an entity which APTE and RICHMAN own in its entirety),
10 while absconding from criminal charges, merits this Court's intervention.

11 It is precisely for cases like these that Congress codified the fugitive disentitlement doctrine,
12 previously a creature of common law, into statute as part of the Civil Asset Forfeiture Reform Act of
13 2000 ("CAFRA"). 28 U.S.C. § 2466. The doctrine provides courts with the authority to strike claims and
14 answers in civil forfeiture proceedings when the claimants are fugitives from justice, as defined in the
15 statute. The purpose of the doctrine is to prevent claimants from using the power of the courts to actively
16 defend against civil forfeiture proceedings, when those same claimants are fugitives from justice in
17 criminal proceedings brought against them in the United States. The doctrine is fully applicable here, as
18 Claimants APTE and RICHMAN are fugitives from justice pursuant to the doctrine. Moreover, the
19 claim of Claimant Land Trust should be stricken because it is a mere nominee for APTE and
20 RICHMAN and it lacks standing to bring a claim.

21 The Court should accordingly grant the government's motion to strike each of the claims in this
22 case. Should the Court conclude that additional discovery is necessary to determine whether granting the
23 government's motion is appropriate, the government respectfully requests that discovery be limited to
24 that basis alone. The government further requests that, if the Court deems additional discovery
25 necessary, this motion be revisited if Claimants raise Fifth Amendment objections to any discovery
26 request the government propounds.

27 **II. BACKGROUND**

28 APTE and RICHMAN were the co-founders of uBiome, Inc. ("uBiome"), a company that

1 purported to test customers' "microbiomes" with the ostensible purpose of allowing consumers to
2 understand the bacterial composition of their various organ systems. Compl. ¶¶ 12-13, Indictment ¶¶ 17.
3 RICHMAN served as uBiome's Chief Executive Officer, whereas APTE served as uBiome's Chief
4 Technology Officer until approximately May 2018, when APTE and RICHMAN began serving as co-
5 Chief Executive Officers. Indictment ¶¶ 3-4. Although uBiome initially offered its products to
6 consumers on the open market, it eventually began offering its products to medical professionals and
7 patients for "clinical" use, *i.e.*, use by medical professionals to make medical decisions. Indictment ¶ 18.

8 APTE's and RICHMAN's decision to launch uBiome's products for ostensible use by medical
9 professionals in clinical settings preceded various actions designed to defraud healthcare providers,
10 healthcare benefit programs, and uBiome investors. APTE and RICHMAN submitted reimbursement
11 claims for clinical test results on samples that had already been analyzed with a consumer test or older
12 clinical test; in other words, they fraudulently submitted reimbursement requests for dated samples or
13 fraudulently submitted multiple reimbursement requests for the same samples. Compl. ¶ 13. APTE and
14 RICHMAN also used a "captive network" of healthcare professionals to review and approve tests. *Id.*
15 This alone was problematic, but even more so because APTE and RICHMAN intentionally provided
16 those professionals with limited and misleading information in a manner designed to facilitate approval
17 of the requested uBiome tests. *Id.* uBiome also fraudulently submitted reimbursement requests for tests
18 that had not been fully validated under applicable scientific standards; manipulated dates of service to
19 maximize reimbursements; and failed to collect patient responsibility payments in violation of law and
20 policies of healthcare benefits programs. *Id.*

21 uBiome, through APTE and RICHMAN, also raised several rounds of funding with outside
22 investors. Compl. ¶¶ 14-22. In doing so, however, APTE and RICHMAN made numerous
23 misrepresentations to those investors and deceived them in material ways, including as to the success of
24 uBiome's collection of healthcare benefit reimbursement rates and revenues; the purported uses and
25 clinical acceptance of uBiome's tests in the medical community; and the legality of uBiome's business
26 practices, especially concerning uBiome's approach (or lack thereof) in collecting patient responsibility
27 payments, the illegal use of a captive network of medical professionals to obtain orders for tests, and the
28 marketing and use of "test upgrades." *Id.*

1 These investments ultimately funded APTE's and RICHMAN's lifestyles, including the
2 purchase of real estate. Compl. ¶¶ 23-36. These purchases included the purchase of a home in Camas,
3 Washington on or about October 12, 2017. Compl. ¶ 30; Indictment ¶ 90. That property was
4 subsequently sold on January 28, 2020, and the proceeds from the sale were used to partially purchase
5 the Defendant Properties, more specifically described as two condominiums located at 465 Ocean Drive,
6 Miami Beach, Florida 33139 (Units 315 and 316). *Id.* The Defendant Properties were purchased by
7 APTE and RICHMAN through the Land Trust, a trust that has served as the title holder of record for the
8 Defendant Properties, *see* Dkt. Nos. 15-2 & 15-3, and as the transferor of the funds used to purchase the
9 Defendant Properties after the sale of the Camas property, *see* Dkt. No. 15-1. The remaining funds that
10 APTE and RICHMAN used to purchase the Defendant Properties were spread over thirteen separate
11 transfers from eight separate financial accounts at numerous banks and other financial institutions.
12 Compl. ¶¶ 34-35. These transfers culminated in the purchase of the Defendant Properties. *Id.*

13 The government filed the instant Verified Complaint for Civil Forfeiture *In Rem* on May 27,
14 2021. As stated above, APTE and RICHMAN filed their respective claims on July 6, 2021, and the Land
15 Trust filed its claim on July 8, 2021. Dkt. Nos. 15, 17, 18. In accordance with the rules governing civil
16 forfeiture of real property, the government filed its complaint; posted notice of the complaint on the
17 Defendant Properties; and served notice and a copy of the complaint on the owner through counsel. *See*
18 Fed. R. Civ. P. Supp. G(3); 18 U.S.C. § 985(c). Each Claimant, including the Land Trust, timely filed
19 their respective motions in accordance with Supplemental Federal Rule of Civil Procedure G(5)(b). In
20 support of its claim, Claimant Land Trust filed a copy of the Trust Agreement and a Certificate of
21 Appointment of Successor Trustee for the 465 Ocean Land Trust. Dkt. No. 18 at 4-11. Per the trust
22 documents, the sole beneficiaries and apparent managers of the trust are APTE and RICHMAN, and the
23 sole trustee is APTE's friend, Gabriel Ceriotti. *Id.* The Court granted Claimants' motion to dismiss the
24 government's complaint with leave to amend on August 26, 2021. Dkt. No. 34. The government filed
25 the First Amended Complaint shortly thereafter. Dkt. No. 35.

26 APTE's and RICHMAN's activities with respect to their management of uBiome also form the
27 basis for two related actions before the Court, including one criminal action against APTE and
28 RICHMAN, as well as a suit brought by the U.S. Securities and Exchange Commission. *See United*

1 *States v. Zachary Apte and Jessica Richman*, Case No. 21-CR-0116 (N.D. Cal. Mar. 18, 2021); *SEC v.*
 2 *Richman, et al.*, Case No. 21-CV-01911 (N.D. Cal. Mar. 18, 2021). The criminal indictment contains
 3 forfeiture allegations that seek the Defendant Properties in addition to a forfeiture money judgment.
 4 Indictment ¶¶ 91-95.

5 Upon the filing of the Indictment, counsel for the government contacted counsel for APTE and
 6 RICHMAN. Defendants' counsel indicated that since at least March 17, 2021 (the day before the
 7 government filed an Indictment that a Grand Jury returned against APTE and RICHMAN), RICHMAN
 8 was suffering from a long-term medical issue, and APTE was serving as RICHMAN's caregiver.
 9 Declaration of Assistant United States Attorney Chris Kaltsas ("Kaltsas Dec."), Ex. 1 ¶ 4. The
 10 government reached out to defendants' counsel yet again on July 20, 2021, at which time they indicated
 11 that RICHMAN's prior sickness and APTE's position of caretaker hindered their return to the United
 12 States to face the charges in the Indictment. *Id.* ¶ 5. Counsel for APTE and RICHMAN did not indicate
 13 whether RICHMAN or APTE had any plan to return to the United States to face the charges in the
 14 Indictment. The government and counsel for APTE and RICHMAN spoke again on October 7, 2021, at
 15 which time claimants' counsel indicated that their clients' medical situation and positions towards
 16 returning to the United States had not materially changed and that no plans to return to the United States
 17 were forthcoming. *Id.* ¶ 6. This motion follows.

18 **III. LEGAL STANDARD**

19 "The fugitive disentitlement doctrine prohibits an individual from using the courts to further one
 20 claim while avoiding the courts' jurisdiction on another matter." *United States v. \$6,190.00 in U.S.*
 21 *Currency*, 581 F.3d 881, 885 (9th Cir. 2009). Originally a doctrine at common law, Congress codified it
 22 as part of the Civil Asset Forfeiture Reform Act of 2000 ("CAFRA") after the Supreme Court of the
 23 United States declined to find that courts maintained the inherent authority to strike the claims of
 24 fugitives in criminal prosecutions related to the relevant civil forfeiture actions. *Id.* (citing *Degen v.*
 25 *United States*, 517 U.S. 820, 823 (1996)); *see also* 28 U.S.C. § 2466. Since then, courts have generally
 26 articulated a five-element test for determining whether a court may strike a fugitive's claim in a
 27 forfeiture proceeding under the fugitive disentitlement doctrine:

28 (1) a warrant or similar process must have been issued in a criminal case
 for the claimant's apprehension; (2) the claimant must have had notice or

1 knowledge of the warrant or process; (3) the criminal case must be related
 2 to the forfeiture action; (4) the claimant must not be confined or
 3 otherwise held in custody in another jurisdiction; and (5) the claimant
 4 must have deliberately avoided prosecution by leaving the United States,
 5 declining to enter or reenter the country, or otherwise evading the criminal
 6 court's jurisdiction.

7 *United States v. \$671,160.00 in U.S. Currency*, 730 F.3d 1051, 1055-56 (9th Cir. 2013) (quoting \$6,190,
 8 581 F.3d at 886). The doctrine also applies to the claims of entities owned or managed by claimants
 9 subject to the doctrine in addition to the claimants themselves. *See United States v. Abhishek Krishnan's*
 10 *Real and Personal Prop. (Krishnan)*, 469 F. Supp. 3d 481, 486 (E.D.N.C. 2020) (denying claim when
 11 claimant makes his claim through a company); *United States v. All Assets Listed in Attachment A*
 12 *(Megaupload)*, 89 F. Supp. 3d 813, 828 (E.D. Va. 2015) (corporation disentitled when the corporation's
 13 majority shareholder is disentitled).

14 The government bears the burden of making a showing as to each of the elements described
 15 above. *United States v. Technodyne LLC*, 753 F.3d 368, 380-81 (2d Cir. 2014). In evaluating a motion to
 16 strike based on the fugitive disentitlement statute, the Court should consider it "as something like a
 17 motion to dismiss, [where the Court] look[s] to matters outside the pleadings, and . . . where appropriate,
 18 allow[] for the possibility of conversion to summary judgment." *\$671,160*, 730 F.3d at 1055 (quoting
 19 *United States v. \$6,976,934.65 Plus Interest*, 478 F. Supp. 2d 30, 38 (D.D.C. 2007)). Upon a finding that
 20 these elements have been met, the Court "may disallow a person from using the resources of the courts
 21 of the United States." 18 U.S.C. § 2466(a). The statute vests "the ultimate decision whether to order
 22 disentitlement . . . in the sound discretion of the district court." *\$6,190*, 581 F.3d at 886 (quoting *United*
 23 *States v. Collazos*, 368 F.3d 190, 198 (2d Cir. 2004)).

24 Moreover, to successfully contest a forfeiture, a claimant must demonstrate both statutory and
 25 Article III standing. *United States v. \$1,181,895.00*, 2015 WL 631394, at *2 (C.D. Cal. Feb. 12, 2015).
 26 Standing is a threshold jurisdictional issue in civil forfeiture cases, *see United States v. Cambio Exacto,*
 27 *S.A.*, 166 F.3d 522, 526-27 (2d Cir. 1999), and the government is entitled to "test" the veracity of the
 28 claimant's claim of ownership and interest any time after a claim is filed. *See United States v.*
\$133,420.00, 672 F.3d 629, 642 (9th Cir. 2012). In a civil forfeiture proceeding, standing is satisfied if
 the claimant can show "a colorable interest in the property, for example, by showing actual possession,

control, title, or financial stake.” *United States v. 475 Martin Lane*, 545 F.3d 1134, 1140 (9th Cir. 2008). Notably, an owner of property does not include “a nominee who exercises no dominion or control over the property.” 18 U.S.C. § 983(d)(6)(B)(iii). It follows that if the claimant does not have a real interest in the property, there is no “case or controversy,” and consequently no basis for the court to exercise jurisdiction under Article III of the Constitution. *See United States v. 5208 Los Franciscos Way*, 385 F.3d 1187, 1191 (9th Cir. 2004). The burden for showing standing rests on the party asserting it. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

IV. ARGUMENT

Claimants are clearly subject to disentitlement in this action. The first four elements are indisputable—APTE and RICHMAN had notice of warrants that this Court issued for their arrest. Moreover, they both have notice of this forfeiture action through counsel, who are representing them in both this action and the related criminal matter. Neither APTE nor RICHMAN are in custody in Germany, where they reside. Finally, with respect to the fifth element of the test, there is no reasonable dispute that Claimants have “deliberately avoided prosecution by leaving the United States, declining to enter or reenter the country, or otherwise evading the criminal court’s jurisdiction.” §671,160, 730 F.3d at 1055-56 (citation omitted). The court should accordingly grant the government’s motion. With respect to the Land Trust, it too is subject to disentitlement as it is only a nominee for APTE and RICHMAN. The Land Trust further lacks standing. Each claim should accordingly be stricken.

A. Warrants Have Issued for the Apprehension of Claimants APTE and RICHMAN in a Criminal Case Related to this Civil Forfeiture Action (Elements One and Three)

The first and third elements of the fugitive disentitlement statute require the government to demonstrate that “a warrant or similar process must have been issued in a criminal case for the claimant’s apprehension,” and that “the criminal case must be related to the forfeiture action.” *Id.* This Court authorized the issuance of arrest warrants for APTE and RICHMAN after a Grand Jury returned a true bill against them in *United States v. Zachary Schulz Apte & Jessica Sunshine Richman*, No. 3:21-CR-116 CRB, Dkt. No. 1 (filed Mar. 18, 2021). As explained in greater detail above, the Indictment charges APTE and RICHMAN with healthcare fraud; conspiracy to commit healthcare fraud; aggravated identity theft; conspiracy to commit wire fraud and securities fraud; wire fraud; fraud in

connection with the purchase and sale of securities; money laundering; and aiding and abetting. Indictment at 24-33. The facts underlying those charges are the same as those at issue in this forfeiture proceeding, to wit: defrauding healthcare benefit programs, investors, and others as to the material workings of uBiome's business, including the testing of archived samples; the relative success of its business model, including with respect to billing and insurance; the use of various tests without obtaining required regulatory approvals; the omission of critical facts to doctors ordering uBiome's tests; manipulation of dates of service for uBiome tests; fraudulently failing to collect patient responsibility; defrauding healthcare insurers upon their various requests for information; and misrepresentation to investors as to the amount of money uBiome made from billing healthcare benefits providers, among other things. *See generally id.* A Grand Jury concluded that there was probable cause to believe that APTE and RICHMAN committed the criminal violations described therein and discussed here, and the Court issued arrest warrants for APTE and RICHMAN on that basis. Dkt. No. 1 at 36, 39. Accordingly, the government has satisfied its burden with respect to the first and third elements of the fugitive disentitlement statute. *See* 28 U.S.C. § 2466(a)(1).

B. Claimants Had Notice and Knowledge of the Warrants Issued in the Criminal Case (Element Two)

With respect to the second element of the fugitive disentitlement statute, Claimants have clear knowledge of the warrants issued in the criminal case, in addition to the two civil suits they are facing. *See United States v. Zachary Apte and Jessica Richman*, Case No. 21-CR-0116 (N.D. Cal. Mar. 18, 2021); *SEC v. Richman, et al.*, Case No. 21-CV-01911 (N.D. Cal. Mar. 18, 2021). Claimants are represented by the same counsel in each of the three cases they face; although counsel for APTE and RICHMAN have not yet appeared in the criminal case, counsel for the government have met and conferred with counsel for APTE and RICHMAN, who have confirmed that they are representing APTE and RICHMAN in this civil forfeiture matter and the criminal case. Kaltsas Dec. ¶ 7.

As counsel for APTE and RICHMAN represent them in the criminal case, the Court is entitled to presume that those same counsel, who should have knowledge of the arrest warrants issued by this Court, communicated that fact to APTE and RICHMAN.² *Krishnan*, 469 F. Supp. 3d at 488 (attorneys

² The penalty sheets attached to the Indictment indicate that the government sought arrest

presumably communicate “notice of any matter within the scope of representation to the client,” including the existence of a criminal warrant in a case related to a civil matter) (quoting *Link v. Wabash R.R. Co.*, 370 U.S. 626, 634 (1962); *Wells Fargo Bank, N.A. v. AMH Roman Two NC, LLC*, 859 F.3d 295, 303 (4th Cir. 2017)); *see also Collazos*, 368 F.3d at 201 (a civil forfeiture claimant’s attorney involvement in a criminal case evidences knowledge of outstanding warrants for arrest related to that criminal case). The government accordingly satisfies its burden with respect to the second element of the fugitive disentitlement statute.

C. Claimants are Not Confined or Otherwise Held in Custody in Another Jurisdiction (Element Four)

The government has also met the fourth factor of the test as Claimants are neither confined nor held in custody in another jurisdiction. According to attorneys for Claimants, Claimants currently reside as a married couple in Germany, where defendant APTE is a citizen. Kaltsas Dec. ¶ 3. There is no evidence suggesting that RICHMAN or APTE are currently “confined or held in custody . . . for commission of criminal conduct in that jurisdiction.” 28 U.S.C. § 2466(a)(2). Accordingly, the government satisfies its burden with respect to the fourth element of the fugitive disentitlement statute.

D. Claimants Have Deliberately Avoided Prosecution by Leaving the United States, and Declining to Reenter the Country (Element Five)

The government also meets its burden in proving the fifth element of the statute. Preliminarily, the government notes that “mere notice or knowledge of an outstanding warrant, coupled with a refusal to enter the United States, does not satisfy [the fifth element of the fugitive disentitlement] statute.” *\$671,160*, 730 F.3d at 1057 (quoting *\$6,976,934.65 Plus Interest*, 554 F.3d 123, 132 (D.C. Cir. 2009)). But in this case, like in *\$671,160*, there is clear evidence that there is more than mere refusal on APTE’s and RICHMAN’s part. In *\$671,160*, the Ninth Circuit concluded that disentitlement was appropriate because the defendant’s “self-enforced absence from the United States [stood] in marked contrast to his extensive travel to California prior to the issuance of the pending criminal charge.” *Id.*

In this case, APTE and RICHMAN only left the United States after the execution of a search warrant in 2019, when they first realized they might be facing criminal charges. There is no evidence

warrants for APTE and RICHMAN. *See* Indictment at 36, 39.

1 that APTE and RICHMAN planned to leave for Germany, or that they ever lived there together before
2 the possibility of criminal charges first presented. Furthermore, APTE and RICHMAN left the country
3 on July 3, 2020, only days after getting their marriage certified in Marin County on June 29, 2020.
4 Kaltsas Dec. ¶ 3. Since the Indictment was filed on March 18, 2021, the government has contacted
5 counsel for APTE and RICHMAN several times. In April of 2021, the government received a letter from
6 RICHMAN's counsel, noting that RICHMAN had suffered from a medical condition that prevented her
7 travel, and that the symptoms from which she was suffering required APTE to provide care for her.
8 Kaltsas Dec. ¶ 2.³ In a phone call with defense counsel on July 20, 2021, RICHMAN's counsel simply
9 provided that they were "not aware of any change [in Richman's health condition]" without any further
10 elaboration. Kaltsas Dec. ¶ 5. Government counsel spoke with counsel for APTE and RICHMAN again
11 on October 7, 2021, where APTE's and RICHMAN's counsel indicated that they were not aware of any
12 change in RICHMAN's medical condition; that APTE was still a caretaker for RICHMAN; and that
13 APTE and RICHMAN had no defined plans to return to the United States to face the criminal charges
14 against them. Kaltsas Dec. ¶ 7. In light of the timing of their marriage and its certification; the timing of
15 the search warrant; APTE's and RICHMAN's sudden departure from the United States to Germany,
16 where APTE is a citizen; the fact that they had never lived in Germany prior to leaving the United States
17 for the last time; and their lack of timeline or plan with respect to facing the criminal charges in this
18 Court, the available evidence clearly indicates APTE and RICHMAN are actively and deliberately
19 avoiding prosecution by leaving the country and declining to return.

20 The government understands that some medical issues may prevent RICHMAN from easily
21 traveling to the United States. But both she and APTE have had approximately seven months to plan a
22 return to the United States and face the criminal charges against them. Not only have they not provided
23 such a plan to the government, but there appears to be no timeline for return to the United States on the
24 horizon. This lack of plan evinces intent to *never* return to the United States. The fact that RICHMAN
25 may be ill does not justify her plan to evade this Court's jurisdiction over her criminal case forever.

26
27
28 ³ Opposing counsel has provided medical documentation to this effect and has consented to the
government filing those documents under seal, which it has done here as exhibits to the Kaltsas
Declaration.

1 There is even less justification for APTE's continued absence as he has never suffered any of the
 2 symptoms RICHMAN claims prevents her return. Indeed, *all* justifications for not returning to the
 3 country crumble in light of their clear intent to continue litigating this civil action; despite the health
 4 problems RICHMAN purportedly faces, APTE and RICHMAN have decided that this civil legal
 5 endeavor is worthier of pursuit than facing the charges outlined in the Indictment. The Court should not
 6 allow APTE and RICHMAN to use the law to shield themselves from criminal liability while
 7 simultaneously fighting a civil case.

8 The government further acknowledges that Claimants may have multiple reasons for not desiring
 9 to return to the United States, with a lack of interest in facing criminal charges among those reasons. But
 10 the existence of multiple reasons for not returning to the United States is of no moment for purposes of
 11 fugitive disentitlement. Indeed, "the existence of other factors that might have also motivated [the
 12 claimant] to remain abroad, such as [their foreign] citizenship and residency, does not [invalidate the
 13 fact that Claimants] made a conscious choice to not 'enter or reenter the United States' in order to avoid
 14 criminal prosecution." *United States v. \$525,695.24 Seized from JPMorgan Chase Bank Investment*
 15 *Account*, 869 F.3d 412, 418 (6th Cir. 2017) (quoting *\$671,160*, 730 F.3d at 1056 n.2). APTE's and
 16 RICHMAN's decision not to enter or reenter the United States in order to avoid prosecution "need not
 17 be the sole motivating factor" for remaining in Germany. *Id.* Rather, "[a]ll that is required is a finding
 18 that 'after notice or knowledge of the fact that a warrant or process has been issued for [their]
 19 apprehension, in order to avoid criminal prosecution,' [the claimants] 'decline[d] to enter or reenter the
 20 United States to submit to its jurisdiction.'" *Id.*; *see also Technodyne*, 753 F.3d at 383 (concluding that,
 21 although the Court must conclude that there was a specific intent to avoid prosecution to find
 22 disentitlement appropriate, a "specific intent" does not equate to "sole, principal, or dominant intent.").
 23 *Technodyne*, 753 F.3d at 383.

24 Accordingly, even if APTE and RICHMAN remained in Germany for any reason in addition to
 25 the desire to avoid criminal prosecution, that intent to avoid prosecution is enough to disentitle them
 26 from their claims in the instant case. To conclude otherwise would allow for the

27 "unseemly spectacle" of allowing an accused to absent himself
 28 deliberately in order to avoid prosecution in the United States while using
 United States courts to retrieve the proceeds of his crime . . . it would defy
 logic to infer that Congress *sub silentio* intended to allow the fugitive to

1 create such an abomination by the simple expedient of claiming some
2 additional reason for not returning. *Id.*

3 *Id.* at 385-86 (quoting *Collazos*, 368 F.3d at 200).

4 The Court should accordingly strike APTE's and RICHMAN's claims pursuant to the fugitive
5 disentitlement statute. The government notes that, if the Court wishes, it would be happy to engage in
6 discovery on this particular issue before discovery on the substantive claims on this case as this is a
7 threshold issue that should be resolved in advance of other issues. *See \$671,160*, 730 F.3d at 1059
8 (concluding that the district court correctly addressed fugitive disentitlement before other motions the
9 claimant had raised in that case); *Krishnan*, 469 F. Supp. 3d at 487 (concluding that fugitive
10 disentitlement is a "threshold issue"). The government does note, however, that there is some likelihood
11 that APTE and RICHMAN would raise constitutionally based objections to reciprocal requests for
12 discovery, rendering that route moot. *See \$671,160*, 730 F.3d at 1058-59 (noting that claimant asked for
13 additional discovery before any decision on the motion while simultaneously rebuffing the government's
14 discovery requests). If the Court orders discovery, but Claimants refuse to offer discovery on Fifth
15 Amendment or other grounds, the government asks the Court to maintain jurisdiction over this motion to
16 adjudicate the dispute accordingly.

17 **E. The Fugitive Disentitlement Doctrine Applies Equally to Claimant 465 Ocean Land
Trust, Which Also Lacks Standing to Bring a Claim**

18 The Court should also disentitle the Land Trust from its claim to the Defendant Properties. The
19 fugitive disentitlement statute "may be applied to a claim filed by a corporation if any majority
20 shareholder, or individual filing the claim on behalf of the corporation is a person to whom" the doctrine
21 may be applied. 28 U.S.C. § 2466(b). Although 465 Ocean Land Trust is a trust and not a corporation,
22 the doctrine applies with equal force, especially as APTE and RICHMAN are both the settlors and
23 beneficiaries of the Land Trust. The Land Trust's claim should also be stricken because it lacks standing
24 to bring a claim in the first place.

25 Applying the fugitive disentitlement doctrine to the Land Trust's claim is entirely appropriate
26 here. The purpose of the doctrine is to "disable any claim or defense that is solely derivative of the
27 fugitive's claim." *United States v. One Parcel of Real Estate at 7707 S.W. 74th Lane, Miami, Dade Cty.,*
28 *Fla.*, 868 F.2d 1214 (11th Cir. 1989). Indeed, in *United States v. \$129,374 in U.S. Currency*, 769 F.2d

583, 587 (9th Cir. 1985), the Ninth Circuit concluded that “[i]f the fugitive is deprived of presenting any claim or defense in [a forfeiture] action as the result of his fugitive status, the conservator of his estate must suffer the same consequences when he seeks to advance the same claim or defense.” Although a conservator differs from a trustee in many respects, both maintain a fiduciary duty to act for the benefit of another. Traditionally, under both the Restatement (Second) of Trusts and the Restatement (Third) of Trusts, a trust is not considered a distinct legal entity but a fiduciary relationship between multiple people. Restatement (Third) of Trusts § 2 (2003). “[A] person in a fiduciary relationship to another is under a duty to act for the benefit of the other as to matters within the scope of the relationship.” *Id.* Cmt. b. A trustee thus owes a fiduciary duty to, and must act in the best interest of, the beneficiaries of the trust as opposed to the trust itself.

In this case, the trust documents filed by the Land Trust confirm that Brian D. Smith, Esq. served as sole trustee of the Land Trust from the date of its formation on February 4, 2020 until his resignation on July 3, 2021, on which date, Gabriel Ceriotti—APTE’s friend—was appointed successor trustee of the Land Trust. Dkt. No. 18 at 4-5. Mr. Ceriotti then filed a claim on behalf of the Land Trust on July 8, just five days after his appointment. *Id.* at 1. To be clear, however, Mr. Ceriotti filed the claim in his capacity as successor trustee *for the benefit of* APTE and RICHMAN, who are the settlors and sole beneficiaries of the Land Trust. In addition, Mr. Ceriotti seeks to advance the same claim to the Defendant Properties asserted by the beneficiaries: “a cognizable right, beneficial interest, and ownership interest.” Dkt. No. 18 at 3. The Land Trust, through Mr. Ceriotti, accordingly stands in the shoes of APTE and RICHMAN, who are themselves barred from asserting defenses against the forfeiture of the Defendant Properties by the fugitive disentitlement doctrine. It follows that Claimant Land Trust should also be barred from asserting the same claim in the Defendant Properties as APTE and RICHMAN. Permitting the Land Trust to continue in the forfeiture proceedings would undermine the very purpose of the doctrine by allowing APTE and RICHMAN, criminal defendants, to enjoy their ill-gotten gains as a result of a loophole without facing the consequences of their criminal activities. This is the same “unseemly spectacle” described above, and the Court should not permit a claim to move forward simply because Claimants employed a trust to hold title to the Defendant Properties. *Technodyne*, 753 F.3d at 385-86 (quoting *Collazos*, 368 F.3d at 200).

Similarly, the Court should dismiss the claim filed by Claimant Land Trust for lack of standing pursuant to Supplemental Federal Rule of Civil Procedure G(8)(c)(i)(B). As noted above, standing is a threshold issue in every civil forfeiture case. *United States v. \$8,440,190.00 in US Currency*, 719 F.3d 49, 57 (1st Cir. 2013). “The term ‘statutory standing’ relates to a claimant’s ability to show that he has satisfied whatever statutory requirements Congress has imposed for contesting a civil forfeiture action in federal court,” whereas “‘Article III standing’ [or ‘constitutional standing’] relates to the claimant’s ability to show that he has a sufficient interest in the property to satisfy the case-or-controversy requirement of Article III of the Constitution.” *United States v. 8 Gilcrease Lane*, 641 F. Supp. 2d 1, 5-6 (D.D.C. 2009) (quoting ASSET FORFEITURE LAW IN THE UNITED STATES: A TREATISE ON FORFEITURE LAW, § 9-4 at 326). To meet Article III standing requirements, a claimant must show a “colorable” claim to an ownership, possessory, or secured interest in the property. *United States v. \$304,980.00 in U.S. Currency*, 732 F.3d 812, 818 (7th Cir. 2013); *United States v. \$38,852.00 in U.S. Currency*, 328 F. Supp. 2d 768, 769 (N.D. Ohio 2004).

In a forfeiture action, courts look to state law to determine the “existence and extent” of a claimant’s property interest. *United States v. \$100,348.00 in U.S. Currency*, 354 F.3d 1110, 1119 (9th Cir. 2004). Though state law defines a claimant’s interest in specific property, “federal law determines the effect of [that] ownership interest on [the claimant’s] right to bring a claim.” *United States v. U.S. Currency, \$81,000.00*, 189 F.3d 28, 33 (1st Cir. 1999) (citing *United States v. Nat’l Bank of Comm.*, 472 U.S. 713, 722 (1985)); *see also United States v. 5 S. 351 Tuthill Rd.*, 233 F.3d 1017, 1021 (7th Cir. 2000) (“State law defines and classifies property interests for purposes of the forfeiture statutes, while federal law determines the effect of the property interest on the claimant’s standing.”).

This case involves a Florida land trust created pursuant to Fla. Stat. § 689.071. A land trust is unique in that legal title and beneficial interests in a property are generally vested in different people, essentially dividing the “bundle of sticks” that typically define property ownership. Specifically:

In a land trust the legal and equitable title lies with the trustee and the beneficiary retains what is referred to as a personal property interest . . . It is important to note, however, that though referred to as personal property, most of the usual attributes of real property ownership are retained by the beneficiary under the trust agreement. In fact, the only attribute of ownership ascribed to the trustee is that relating to title, upon which third parties may rely in transactions where title to the real estate is of primary importance. . . Title to property does not necessarily involve ownership of

the property. Title refers only to a legal relationship to the land, while ownership is comparable to control and denotes an interest in the real estate other than that of holding title thereto . . . The key elements of ownership are control and the right to enjoy the benefits of the property . . . Thus, where the trust beneficiary is the recipient of all the benefits of the property and controls the management of the property, he is the party most benefited . . . regardless of who holds the title.

People v. Chi. Title & Tr. Co., 389 N.E.2d 540, 543-44 (Ill. 1979) (citations omitted); *see also Taylor v. Richman's New Approach Ass'n, Inc.*, 351 So. 2d 1094 (Fla. 2d DCA 1977) ("In this type of land trust, both the legal and equitable title are vested in the trustee. The beneficiary has no interest in either. The rights, privileges and obligations of the beneficiaries are not interests in real estate, but are expressly characterized as personal property."). Indeed, although a land trust beneficiary's name does not appear publicly as an owner of record, the beneficiary generally retains certain ownership rights such as the right of possession, operation, maintenance, and control along with the right to use and enjoy the property; outside of holding title, the beneficiary of a land trust exercises and manages all rights of ownership, especially with a power of direction. *See* 76 Am. Jur. 2d Trusts § 261. Moreover, while real and personal property interests of Florida land trust are divided between trustee and beneficiary, a Florida land trust is "essentially the same as ordinary trust in terms of duties, rights and responsibilities of trustee and beneficiary." *In re Saber*, 233 B.R. 547, 554 (Bkrpcy. S.D. Fla. 1999).

Per the documents filed by the Claimants and pursuant to Florida law, Mr. Ceriotti, in his capacity as trustee, holds 100 percent of the legal and equitable interest in the Defendant Properties. APTE and RICHMAN each hold a fifty percent beneficial interest in the Land Trust. Federal law subsequently governs which of the claimants has standing to contest the forfeiture based on a superior interest in the properties.

First, Claimant Land Trust's assertion of a beneficial interest in the Defendant Properties is meritless, as the trust documents show that only APTE and RICHMAN hold beneficial interests in the Defendant Properties. Second, to the extent that Claimant Land Trust asserts an ownership interest in the Defendant Properties, the Land Trust does not qualify as an "owner" as defined by 18 U.S.C. § 983(d)(6) which specifically excludes "a nominee who exercises no dominion or control over the property." Indeed, it is well established in the world of forfeiture law that bare legal title, without more, is insufficient to establish Article III standing; a claimant must exercise dominion and control over the

property and be more than a nominee to adequately assert standing. *See United States v. 1990 Chevrolet Corvette*, 37 F.3d 421, 422-23 (8th Cir. 1994) (titled owner lacks standing to contest forfeiture of property over which she exercised no dominion or control and lacked financial means to acquire it); *Gilcrease Lane*, 641 F. Supp. 2d at 5-6 (applying 18 U.S.C. § 983(d)’s definition of owner to a standing inquiry); *United States v. 2005 Dodge Magnum*, 845 F. Supp. 2d 1361, 1367–1370 (N.D. Ga. 2012) (bare legal title is not sufficient; the heart of Article III standing is the existence of an actual injury, and nominees and straw owners suffer no injury if the property is forfeited); *cf. 5208 Los Franciscos Way*, 385 F.3d at 1192-93 (claimants lacked Article III standing where assertion of standing was based on, as a matter of state law, a fraudulent transfer of title to claimants).

Here, Claimant Land Trust is merely a nominee and not an “owner” of the Defendant Properties for forfeiture purposes. Pursuant to the explicit terms of the trust, Mr. Ceriotti is not permitted to perform any action on behalf of the trust without the direction and written consent of APTE and RICHMAN. Only APTE and RICHMAN have the right to alienate the properties, as well as collect any income generated by them. APTE and RICHMAN are exclusively responsible for paying all taxes and costs associated with the properties. Most importantly, the funds used to purchase the Defendant Properties were provided by APTE and RICHMAN. In fact, Mr. Ceriotti has no financial stake in the properties and would not be injured should the properties be forfeited to the government. Therefore, the Land Trust does not have an interest sufficient to maintain standing in these proceedings. The Court should accordingly strike the Land Trust’s claim as it is a mere nominee holding title for APTE and RICHMAN, and because it lacks standing to bring a claim.

V. CONCLUSION

Claimants’ attempts to shield themselves from criminal prosecution while actively litigating a civil forfeiture action should not be tolerated. To allow otherwise would essentially provide a loophole to Claimants to potentially enjoy the proceeds of their criminal activities while evading the consequences for their fraud on health care benefit programs and investors. APTE and RICHMAN should further not avoid the fugitive disentitlement doctrine simply because they utilized a land trust to hold the assets subject to forfeiture. Indeed, the legal nature of the Land Trust renders it incapable of asserting adequate standing, let alone serving as an independent entity capable of avoiding the fugitive

1 disentitlement doctrine. The Court should accordingly strike claimants' claims.

2
3 DATED: October 18, 2021

Respectfully submitted,

4 STEPHANIE M. HINDS
5 Acting United States Attorney

6 /s/
7 CHRIS KALTSAS
8 Assistant United States Attorney
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28